

House Engrossed Senate Bill

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 225

SENATE BILL 1167

AN ACT

AMENDING SECTION 36-2934.01, ARIZONA REVISED STATUTES; RELATING TO THE
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-2934.01, Arizona Revised Statutes, is amended
3 to read:

4 36-2934.01. Creation of trusts; eligibility for the system;
5 share of cost

6 A. The administration has sole authority to qualify any trusts that
7 are created pursuant to section 1917(d)(4)(A), (B) and (C) of the social
8 security act and shall require that the trustee provide the following
9 information and assurances when the trustee submits trust documents to the
10 administration for approval:

11 1. Specific language that protects the state's beneficiary interest
12 in the trust and that names the administration OR THE STATE MEDICAID AGENCY
13 as the primary beneficiary of the trust if the trust is terminated before or
14 on the death of the member. The trust document shall state that the trustee
15 shall pay on a monthly basis the share of cost amount established by the
16 posteligibility treatment of income determination pursuant to subsection D
17 of this section.

18 2. A provision that requires the direct deposit of all income assigned
19 to the trust by the grantor, when legally permissible, into an account titled
20 to the trust.

21 3. A detailed description of how the trust funds will be administered
22 and disbursed. The trustee shall submit the description at the same time
23 that the trustee submits the trust document to the administration for review.
24 The administration shall review the planned disbursements or plan approved
25 by the probate court and render a decision on the appropriateness of the
26 disbursements or plan within ~~ten working days~~ THE TIME FRAMES ESTABLISHED BY
27 FEDERAL LAW FOR PROCESSING APPLICATIONS FOR MEDICAL ASSISTANCE. THE
28 ADMINISTRATION MAY EXTEND THIS LIMIT TO ENABLE A TRUSTEE TO AMEND A TRUST OR
29 TO PROVIDE ADDITIONAL INFORMATION REQUESTED BY THE ADMINISTRATION. The
30 trustee shall report to the administration any new trust funding or
31 modifications to the planned disbursements from the trust no less than
32 forty-five days before the intended action or change by the trustee. Under
33 extenuating circumstances, the trustee may forgo the forty-five day reporting
34 requirement, and provide notice to the administration within thirty days
35 from the date of disbursement. If the administration determines that the
36 disbursement was not appropriate, or that any other provisions of the trust
37 or this section have been violated, the administration shall consider the
38 trust in accordance with subsection ~~D~~ F of this section. The trustee may
39 appeal this decision, but the provisions described in ~~subsection H~~
40 SUBSECTIONS I AND J of this section shall be applied if the administration's
41 action is affirmed. On request of the administration, the trustee shall
42 provide verification of how the funds were administered.

1 4. A statement signed by the trustee acknowledging that an adverse
2 action may be taken against the member's eligibility for the system if the
3 trustee improperly violates the terms of the trust or the requirements of
4 this section or if the trustee takes any action that limits the
5 administration's beneficiary interest in the trust.

6 5. Specific language that protects the trust for the benefit of the
7 trust beneficiary. The trust document shall state that disbursements shall
8 not be made for other than those purposes allowed pursuant to this section.

9 B. For a trust that qualifies pursuant to subsection A of this
10 section, the trustee shall not make any disbursements from the trust other
11 than for the following:

12 1. Reasonable legal and professional expenses related to the trust
13 including:

14 (a) Trust taxes.

15 (b) Trust investment fees.

16 (c) Reasonable professional expenses, including trustee, accounting
17 and attorney fees related to THE ADMINISTRATION OF the trust.

18 2. The posteligibility share of cost as computed pursuant to section
19 36-2932.

20 3. FOR TRUSTS CREATED PURSUANT TO SECTION 1917(D)(4)(B) OF THE SOCIAL
21 SECURITY ACT, A DISBURSEMENT TO THE BENEFICIARY EQUAL TO THE PERSONAL NEEDS
22 ALLOWANCE AS COMPUTED PURSUANT TO SECTION 36-2932.

23 ~~3.~~ 4. Health insurance premiums, medically necessary medical expenses
24 and special medical needs of the beneficiary including:

25 (a) Expenses required to make the home accessible to the person.

26 (b) The purchase and maintenance of a specially equipped vehicle
27 TITLED TO THE TRUST OR TO THE BENEFICIARY WITH A LIEN AGAINST THE VEHICLE
28 HELD BY THE TRUST IN AN AMOUNT EQUAL TO THE CURRENT MARKET VALUE OF THE
29 VEHICLE.

30 (c) Durable medical equipment.

31 (d) Over-the-counter supplies and medications, including diapers,
32 lotions and cleansing wipes.

33 (e) Personal care services that are determined to be medically
34 necessary by the program contractor and that are provided by a person who is
35 registered by the administration to provide the services and who is not a
36 financially responsible relative of the beneficiary. FOR THE PURPOSES OF
37 THIS SUBDIVISION, "FINANCIALLY RESPONSIBLE RELATIVE" MEANS THE SPOUSE OF THE
38 BENEFICIARY OR, IF THE BENEFICIARY IS A CHILD UNDER EIGHTEEN YEARS OF AGE,
39 THE PARENT OF THE BENEFICIARY.

40 ~~4.~~ 5. Maintenance payments for the spouse or family in accordance
41 with 42 United States Code section 1396R-5(d)(1) and (2) and section 36-2932,
42 subsection L.

43 6. GUARDIANSHIP AND CONSERVATORSHIP FEES FOR THE TRUST BENEFICIARY
44 BASED ON THE FAIR MARKET VALUE OF THE SERVICES PROVIDED.

1 5- 7. Other THE FOLLOWING expenses for the benefit of the
2 beneficiary, including EXCLUDING GIFTS TO, PAYMENTS FOR OR LOANS TO OTHER
3 PERSONS, WHETHER THESE ARE IN CASH OR IN KIND:

4 (a) Entertainment, educational or vocational NEEDS OR items that are
5 consistent with the person's ability to use these items.

6 (b) Other expenses that are individually approved by the director.

7 (c) Living expenses for food, clothing and shelter. IF HOME PROPERTY
8 OR OTHER REAL PROPERTY IS PURCHASED BY THE TRUST IT MUST BE TITLED TO THE
9 TRUST.

10 (d) INCOME TAXES OWED ON INCOME FROM TRUST INVESTMENTS OR ON INCOME
11 OF THE BENEFICIARY THAT IS ASSIGNED TO THE TRUST WHEN AN ACTUAL TAX LIABILITY
12 IS ESTABLISHED.

13 (e) PROVISION FOR BURIAL EXPENSES THAT IS LIMITED TO ONE OF THE
14 FOLLOWING METHODS:

15 (i) PURCHASE OF A PREPAID BURIAL PLAN FUNDED BY AN IRREVOCABLE LIFE
16 INSURANCE POLICY, IRREVOCABLE BURIAL ACCOUNT, IRREVOCABLE TRUST ACCOUNT OR
17 IRREVOCABLE ESCROW ACCOUNT.

18 (ii) PURCHASE OF LIFE INSURANCE TO FUND A BURIAL PLAN FOR THE
19 BENEFICIARY WITH A FACE VALUE THAT DOES NOT EXCEED ONE THOUSAND FIVE HUNDRED
20 DOLLARS AFTER ALLOWING DEDUCTIONS FOR BURIAL PLOT ITEMS AS DEFINED BY THE
21 ADMINISTRATION.

22 (iii) FUNDING A BURIAL FUND ACCOUNT IN AN AMOUNT NOT TO EXCEED ONE
23 THOUSAND FIVE HUNDRED DOLLARS.

24 (f) TRAVEL EXPENSES FOR A COMPANION, OTHER THAN A BENEFICIARY'S
25 FINANCIALLY RESPONSIBLE RELATIVE, WHEN A COMPANION IS REQUIRED TO ENABLE THE
26 BENEFICIARY TO TRAVEL FOR NONMEDICAL REASONS.

27 C. For trusts that qualify pursuant to subsection A of this section,
28 the administration shall consider only the person's proportionate share of
29 expenses as for the benefit of the trust beneficiary if these expenses also
30 benefit others.

31 D. For trusts that are created pursuant to section 1917(d)(4)(A), (B)
32 and (C) of the social security act, the administration shall require that the
33 post-eligibility POSTELIGIBILITY treatment of income that is determined
34 pursuant to section 36-2932 shall include the income assigned to the trust
35 and any other countable income received by the member, excluding interest and
36 dividends earned by the trust corpus and added to the principal. Each month
37 the administration shall count for income eligibility purposes any
38 disbursements made to the beneficiary and any payments made on behalf of the
39 beneficiary for food, clothing or shelter. THE ADMINISTRATION SHALL COUNT
40 DISBURSEMENTS ISSUED FOR THE PERSONAL NEEDS ALLOWANCE PURSUANT TO SUBSECTION
41 B, PARAGRAPH 3 OF THIS SECTION AS DISBURSEMENTS FOR FOOD OR SHELTER.

42 E. In order for a trust that is created pursuant to section
43 1917(d)(4)(B) of the social security act to be considered under this section,
44 the sum of the individual's countable nontrust income and the income assigned
45 to the trust, excluding interest and dividends earned by the trust corpus and

1 added to the principal shall be equal to or less than the private pay rate
2 established in the state plan.

3 F. For revocable or irrevocable trusts that are created pursuant to
4 section 1917(d)(3)(A) or (B) of the social security act, the administration
5 shall include the income that is received by the trust, excluding interest
6 and dividends earned by the trust corpus and added to the principal or that
7 is disbursed from the trust, whichever is greater, for both income
8 eligibility calculations under section 36-2934 and post-eligibility
9 POSTELIGIBILITY of income under section 36-2932. In determining eligibility
10 for the system, the administration shall consider payments from the trust
11 regardless of the purpose for which the payment is made.

12 G. Notwithstanding this section, a trust that is established before
13 August 11, 1993 shall be evaluated in accordance with the provisions
14 contained in the state plan.

15 H. If the administration determines that the trustee did not report
16 changes in the amount of trust income or disbursements from the trust to the
17 administration in the time frame and manner specified in subsection A of this
18 section, the administration shall notify the member of the noncompliance and
19 shall prospectively apply the adverse action that would have resulted if the
20 change had been reported in a timely manner. If benefits for the system are
21 continued by the administration pending a decision by the director after a
22 hearing on a proposed adverse action that results from trust income or
23 disbursements and the director upholds the administration, the administration
24 shall apply the adverse action on a prospective basis.

25 I. THE ADMINISTRATION SHALL CONSIDER TRUST DISBURSEMENTS ISSUED IN
26 VIOLATION OF THIS SECTION AS A TRANSFER WITHOUT FAIR CONSIDERATION.

27 J. IF THE ADMINISTRATION DETERMINES THAT THE TRUSTEE IS IN VIOLATION
28 OF THIS SECTION OR THE TERMS OF A NEW OR EXISTING TRUST, THE ADMINISTRATION
29 SHALL CONSIDER ALL TRUST ASSETS HELD IN THE TRUST AND INCOME HELD IN OR
30 PRODUCED BY THE TRUST, AVAILABLE TO THE BENEFICIARY UNDER 42 UNITED STATES
31 CODE SECTION 1396P(D)(3) UNTIL THE TRUSTEE CORRECTS THE VIOLATION.

32 Sec. 2. Exemption from rule making

33 For the purposes of this act, the Arizona health care cost containment
34 system administration is exempt from the rule making requirements of title
35 41, chapter 6, Arizona Revised Statutes, for one year after the effective
36 date of this act.

APPROVED BY THE GOVERNOR MAY 12, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2004.

Passed the House April 29, 20 04


by the following vote: 38 Ayes,

13 Nays, 9 Not Voting

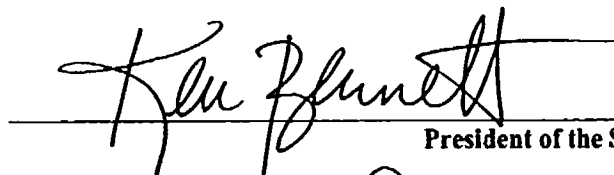
Passed the Senate March 15, 20 04

by the following vote: 26 Ayes,

2 Nays, 1 Not Voting



Speaker of the House
Pro Tempore
Cheryl Laube
Asst. Chief Clerk of the House



President of the Senate
Charmine Billings
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1167

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 6, 2004,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]
President of the Senate
[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

6th day of May, 2004,

at 2:04 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 12 day of

May, 2004,

at 2⁰⁰ o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 12 day of May, 2004,

at 4:45 o'clock P. M.

[Signature]
Secretary of State

S.B. 1167